

IDAHO STATE TAX COMMISSION
COMMISSIONERS' OPEN MEETING
MINUTES OF MEETING HELD NOVEMBER 19, 2014

In attendance: Commissioners Richard W. Jackson, Tom Katsilometes, and Ken A. Roberts; Michael Chakarun, Valerie Dilley, Mark Poppler, Bill von Tagen, Randy Tilley; Cynthia Adrian, Sherry Briscoe, Lisa Palmer, Leah Parsons, McLean Russell; George Brown, Erick Shaner.

Guests: Dennis Stevenson, Matthew Warnick; Brody Aston, Diane Holman, Jason Kreizenbeck, Jay Larson, Melissa Nelson, Robert Overstreet, Jonathan Parker, Celynda Roach, Kirby Sandberg, Richard Smith, Andrew Vaughan, Ron Williams.

Public Session.

Chairman Richard W. Jackson convened the open meeting. The Chairman welcomed the guests and requested they introduce themselves for the record.

Continued Comments on Proposed Sales Tax Rule 027.

Chairman Jackson opened the meeting for the Commission to listen to further public comments on the Proposed Sales Tax Rule 027 – Computer Equipment, Software, & Data Services. This rule was published in the October Bulletin and even though the comment period in the negotiated rulemaking process had passed, the Commission responded to the several public requests to continue comments on the proposed rule.

Mr. Ron Williams, Williams Bradbury, commented on the subsection including the definition of digital products. Diane Holman, Netflix, submitted a statement by Netflix, Inc. Ms. Holman commented that the Tax Commission lacks the authority to tax video streaming, since the content is only offered to subscribers for viewing, and Netflix retains the ownership of the content.

Commissioner Tom Katsilometes asked what McLean Russell's, ISTC Tax Policy Specialist, thoughts were on Netflix's statement. Mr. Russell noted that the law as written is not specific on the issue of video streaming and, as noted by Ms. Holman, told the Senate Local Government & Taxation Committee that the bill was uncertain on this point. However, Mr. Russell pointed out that Mr. Jay Larson, the sponsor of the bill, disagreed with Mr. Russell's comments in his closing statement before the same Committee stating that Netflix's service was clearly taxed under his bill. Mr. Russell agreed with Ms. Holman that as has been done in many other states, including the 25 states that are part of the Streamlined Agreement, the Legislature should clarify the language in the statute in regards to digital subscriptions. But given the language of the new law combined with Mr. Larson's comments before the Legislature, Mr. Russell believes the rule at this time should state that Netflix's streaming subscription service is taxable.

Mr. Jason Kreizenbeck, Lobby Idaho, represented Direct TV and Dish Network, and at the last open meeting, he had requested adding the term satellite to the rule's language. Since then, Mr. Kreizenbeck had met with the Commission on this issue.

Commissioner Ken A. Roberts noted that this was a situation where the law needed clarification on the Legislature's intent regarding video streaming and also a definition of live broadcasts. Tax law will need to keep up with the types of technologies.

Commissioner Katsilometes requested hearing from one of the law's sponsors, Mr. Jay Larson, from the Idaho Technological Council. Mr. Larson thanked the Commission for the opportunity to offer some clarification and noted that the legislation has gone in the right direction

regarding downloading software, yet at this time, there was no proposed legislation to clarify the necessary definitions.

Business Requiring Vote of the Commission.

Resolution 14-11 – Temporary Sales Tax Rule 027.

McLean Russell, Sales and Use Tax Rules Committee Chair, presented Resolution 14-11 – Temporary Sales Tax Rule 027 to the Commission and recommended its adoption. Resolution 14-11 deals with Proposed Sales Tax Rule 027 – Computer Equipment, Software, & Data Services, published in the October Bulletin. This proposed rule addresses changes from the passage of House Bill 598 during the 2014 legislative session. HB 598 exempted software delivered through any method other than tangible storage media transferred to the user. The only exception is for digital videos, music, books, and games, which remain taxable regardless of delivery method. The proposed rule does not address satellite television as the statutory language is too vague. It does contain language that explicitly imposes a tax on subscriptions to digital libraries (video streaming) though most participants in the rulemaking process have expressed disagreement with this position.

Commissioner Roberts moved that the Resolution 14-11 deals with Proposed Sales Tax Rule 027 – Computer Equipment, Software, & Data Services be adopted and Commissioner Katsilometes seconded. Commissioner Roberts spoke to the motion for the official record that the Commission makes policy decisions based on the information presented in the committees and to the best of their ability interpret the law. Commissioner Katsilometes noted not being in favor of the rule, but would want legislation to clarify. Mr. Kreizenbeck noted how he would continue work with the Commission and the Legislature on behalf of his clients. Chairman Jackson noted that this subject is being discussed world-wide and is an evolving issue.

There were no more comments or amendments. All voted in the affirmative, and the Resolution 14-11 was adopted.

There was no more business requiring a vote of the Commission.

Other Business.

There was no other business.

Public Comments.

There were no more public comments.

Adjourn

There being no further business, the meeting adjourned.

Valerie J. Dilley
Secretary

Richard W. Jackson
Chairman